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ABSTRACT

Significant changes in administration of student records for Oregon students occurred as the result of House Bill 2062, which became effective in November 1993. This publication provides help to Oregon school personnel and patrons in the proper handling of student records and confidentiality as affected by that bill and other Federal and state laws related to student records. The latest Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are included in the initial distribution of this publication. Subsequent distributions will include sample board policies, sample procedures and forms, and an array of the most frequently asked questions and answers. (LMI)

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Student Education Records and Confidentiality

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EA 026 970

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Student Education Records and Confidentiality

September, 1994

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Foreword

Significant changes in administration of student records for Oregon students occurred as the result of House Bill 2062, which became effective in November, 1993. This publication was produced to provide assistance to Oregon school personnel and patrons in the proper handling of student records and confidentiality as impacted by that bill and other Federal and state laws related to student records.

The latest Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are included in the initial distribution of this publication. Subsequent distributions will include sample board policies, sample procedures and forms, and an array of the most frequently asked questions and answers.

As local education agencies develop materials related to this subject, it is hoped that they will be shared with Department personnel for review and further sharing throughout the state.

For technical assistance in regard to these matters, please contact Don Perkins, Student Services Specialist, Oregon Department of Education, 255 Capitol Street NE, Salem, OR 97310-0203 or phone (503) 378-5585.

Table of Contents

Oregon Revised Statutes	Section 1
Oregon Administrative Rules	Section 2
Sample Board Policies	Section 3
Sample Procedures and Forms	Section 4
Questions and Answers	Section 5

Section 1

Oregon Revised Statutes

Highlights of Changes
in Student Records as a Result of
House Bill 2062

Section 1: Repealed previously existing law which:

Defined student records, behavioral records and progress records,

Provided for confidentiality of student records, and rules for inspection and release of those records and

Provided procedures for transfer of student records to other schools or districts.

Section 2: Established new provisions in sections 3 and 4 related to student education records.

Section 3: Assigned responsibility to the State Board of Education for the adoption of rules related to the creation, use, custody and disclosure, including access, of student education records.

Gave the State Board of Education the option of allowing district school boards to decide whether to allow disclosure of the address and telephone number or photograph of students, with the prior consent of the parent or legal guardian.

Section 4: Established new provisions relating to the transfer of student education records for students enrolling in a public or private school or other educational agencies or institutions.

Provided specific timelines and procedures related to parents receiving notification of intended transfer and required parents to be given option of (a) examining records before transfer and/or (b) proposing amendment of records before transfer.

Section 5: Provided technical language to bring ORS 339.260 in line with new statute.

Section 6: Provided technical language to bring ORS 341.290, which focuses on community colleges, in line with new statute .

Section 7: Provided technical language to bring ORS 351.070, which focuses on institutions under the jurisdiction of the State Board of Education, in line with new statute.

Section 8: Established provision that any person claiming to be aggrieved by the reckless disclosure of information from a student's education records may file a civil action for relief and/or damages.

Section 9: Established provision for disclosure of information from a student's education record if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

Please note: In HB 2062, **new provisions are in bold;** *deleted provisions are in [brackets] and italics;* and unchanged provisions are in regular type.

CHAPTER 806

AN ACT HB 2062

Relating to student records; creating new provisions; amending ORS 339.260, 341.290 and 351.070; and repealing ORS 336.185, 336.195 and 336.215.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 336.185, 336.195 and 336.215 are repealed and sections 3, 4 and 9 of this Act are enacted in lieu thereof.

SECTION 2. Sections 3 and 4 of this Act are added to and made a part of ORS chapter 326.

SECTION 3. The State Board of Education shall adopt by rule standards for the creation, use, custody and disclosure, including access, of student education records that are consistent with the requirements of applicable state and federal law. The state board shall distribute the rules that are adopted to all school districts. The school districts shall make those rules available to the public schools in the district and to the public. The state board may differentiate the standards applicable to persons 18 years of age or older or enrolled in post-secondary institutions and may allow district school boards to decide whether to allow disclosure of the address and telephone number or photograph of students with the prior consent of the parent or legal guardian. The standards shall include requirements under which public and private schools and education service districts transfer student education records pursuant to section 4 of this 1993 Act.

SECTION 4. (1) Within 10 days of a student's seeking initial enrollment in a public or private school or when a student is placed in a state institution, other than an institution of post-secondary education, or a private agency or youth care center, the school, institution, agency or center shall notify the public or private school or the institution, agency or center in which the student was formerly enrolled and shall request the student's education records.

(2) Subject to ORS 339.260, any public or private school, state institution, private agency or youth care center receiving the request described in subsection (1) of this section shall transfer all student education records relating to the particular student to the requesting school, institution, agency or center no sooner than seven days after the receipt of the request. If no request is made under subsection (3) of this section, the school, institution, agency or center shall transfer the student education records no later than 10 days after receipt of the request. The education records shall include any education records relating to the particular student retained by an education service district.

(3) Upon receipt of a request for transfer of education records, the public or private school, education service district, state institution, private agency or youth care center that has custody of the student's education records shall notify the parent or legal guardian of the student of the requested transfer in a manner specified and at the time specified by the State Board of Education by rule. The parent or legal guardian shall have opportunity to examine the education records that are subject to transfer and to request the amendment of specified contents in the education records if the parent or legal guardian believes that the contents are inaccurate, misleading or in violation of the privacy or other rights of the student. The parent or legal guardian is entitled to a hearing if the school, district, institution, agency or center refuses the request to amend specified material in the student's education records. The hearing shall be conducted in accordance with rules of the state board.

(4) As used in this section:

(a) "Private agency" means an agency with which the Department of Education contracts under ORS 343.961.

(b) "Youth care center" means a center as defined in ORS 420.855.

SECTION 5. ORS 339.260 is amended to read:

339.260. (1) No pupil shall willfully damage or injure any school property or threaten or willfully injure any fellow pupil or faculty member.

(2) A pupil who violates subsection (1) of this section may be disciplined, suspended or expelled.

(3) Any school district which is owed a fee or the property of which has been lost or willfully damaged or injured may withhold the grade reports, diploma or records of the pupil who owes the fee or is responsible for the loss or damage until the pupil or the parent or guardian of the pupil has paid the amount owed.

(4) When the pupil or the parent or guardian of the pupil is unable to pay the amount owed under subsection (3) of this section, the school district may waive the amount owed.

(5) The parent or guardian of such pupil shall be liable for damages as otherwise provided by law.

(6) Notwithstanding subsections (3) and (4) of this section, a school district shall not withhold the **education** records of a pupil in the circumstances described in [*ORS 336.195 (3)*] **section 4 of this 1993 Act and applicable rules of the State Board of Education** or when such records are requested [*by another school district*] for use in the appropriate placement of the pupil.

(7) Before any grade reports, diplomas or records are withheld under subsections (3) or (4) of this section, a school district board of directors shall adopt rules of procedure which insure that the rights of the pupil to due process are protected.

(8) Nothing in subsection (3) of this section is intended to prevent inspection of student **education** records by a parent or legal guardian pursuant to ORS [*336.195 (2) or*] 343.173**, the rules of the State Board of Education and applicable state and federal law**.

SECTION 6. ORS 341.290 is amended to read:

341.290. The board of education of a community college district shall be responsible for the general supervision and control of any and all community colleges operated by the district. Consistent with any applicable rules of the State Board of Education, the board may:

(1) Subject to ORS chapter 237, employ administrative officers, professional personnel and other employees, define their duties, terms and conditions of employment and prescribe compensation therefor, pursuant to ORS 243.650 to 243.782.

(2) Enact rules for the government of the community college, including professional personnel and other employees thereof and students therein.

(3) Prescribe the educational program.

(4) Control use of and access to the grounds, buildings, books, equipment and other property of the district.

(5) Acquire, receive, hold control, convey, sell, manage, operate, lease, lease-purchase, lend, invest, improve and develop any and all property of whatever nature given to or appropriated for the use, support or benefit of any activity under the control of the board, according to the terms and conditions of such gift or appropriation.

(6) Purchase real property upon a contractual basis when the period of time allowed for payment under the contract does not exceed 30 years.

(7) Fix standards of admission to the community college, prescribe and collect tuition for admission to the community college, including fixing different tuition rates for students who reside in the district, students who do not reside in the district but are residents of the state and students who do not reside in the state.

(8) Prescribe and collect fees and expend funds so raised for special programs and services for the students and for programs for the cultural and physical development of the students.

(9) Provide and disseminate to the public information relating to the program, operation and finances of the community college.

(10) Establish or contract for advisory and consultant services.

(11) Take, hold and dispose of mortgages on real and personal property acquired by way of gift or arising out of transactions entered into in accordance with the powers, duties and authority of the board and institute, maintain and participate in suits and actions and other judicial proceedings in the name of the district for the foreclosure of such mortgages.

(12) Maintain programs, services and facilities, and, in connection therewith, cooperate and enter into agreements with any person or public or private agency.

(13) Provide student services including health, guidance, counseling and placement services, and contract therefor.

(14) Join appropriate associations and pay any required dues therefor from resources of the district.

(15) Apply for federal funds and accept and enter into any contracts or agreements for the receipt of such funds from the Federal Government or its agencies for educational purposes.

(16) Exercise any other power, duty or responsibility necessary to carry out the functions under this section or required by law.

(17) Prescribe rules for the use and access to public records of the district that are consistent with ORS 192.420**, and education records of students under applicable state and federal law and rules of the State Board of Education. Whenever a student has attained 18 years of age or is attending an institution of post-secondary education, the permission or consent required of and the rights accorded to a parent of the student regarding education records shall thereafter be required of and accorded to only the student.** However, **faculty records relating to matters such as conduct, personal and academic evaluations, disciplinary actions, if any, and other personal matters** [*the following records*] shall not be made available to public inspection for any purpose except with the consent of the person who is the subject of the record[, *student or faculty,*] or upon order of a court of competent jurisdiction. [:]

[*(a) Student records relating to matters such as grades, conduct, personal and academic evaluations, results of psychometric testing, disciplinary actions, if any, and other personal matters.*]

[*(b) Faculty records relating to matters such as conduct, personal and academic evaluations, disciplinary actions, if any, and other personal matters.*]

(18) Enter into contracts for the receipt of cash or property, or both, and establish annuities pursuant to ORS 731.704 to 731.724; and, commit, appropriate, authorize and budget for the payment of or other disposition of general funds to pay, in whole or in part, sums due under an annuity agreement, and to provide the necessary funding for reserves or other trust funds pursuant to ORS 731.716.

(19) Encourage gifts to the district by faithfully devoting the proceeds of such gifts to the district purposes for which intended.

(20) Build, furnish, equip, repair, lease, purchase and raze facilities; and locate, buy and acquire lands for all district purposes. Financing may be by any prudent method including but not limited to loans, contract purchase or lease. Leases authorized by this section include lease-purchase agreements whereunder the district may acquire ownership of the leased property at a nominal price. Such financing agreements may be for a term of up to 30 years except for lease arrangements which may be for a term of up to 50 years.

(21) Participate in an educational consortium with public and private institutions that offer upper division and graduate instruction. Community colleges engaged in such consortiums may expend money, provide facilities and assign staff to assist those institutions offering upper division and graduate instruction.

SECTION 7. ORS 351.070 is amended to read:

351.070. (1) The State Board of Higher Education may, for each institution under its control:

(a) Appoint and employ a president and the requisite number of professors, teachers and employees, and prescribe their compensation and tenure of office or employment.

(b) Demand and receive the interest mentioned in ORS 352.510 and all sums due and accruing to the institutions of higher education for admission and tuition therein, and apply the same, or so much thereof as is necessary, to the payment of the compensation referred to in paragraph (a) of this subsection and the other current expenses of the institutions.

(c) Prescribe fees for enrollment into the institutions. Such enrollment fees shall include tuition for education and general services and such other charges found by the board to be necessary to carry out its educational programs.

(d) Prescribe incidental fees for programs under the supervision or control of the board found by the board, upon its own motion or upon recommendation of the recognized student government of the institution concerned, to be advantageous to the cultural or physical development of students. Fees realized in excess of amounts allocated and exceeding required reserves shall be considered surplus incidental fees and shall be allocated for programs under the control of the board and found to be advantageous to the cultural or physical development of students by the institution president upon the recommendation of the recognized student government at the institution concerned.

(e) Upon recommendation of the recognized student government, collect optional fees authorized by the institution executive, for student activities not included in paragraph (c) or (d) of this subsection. The payment of such optional fees shall be at the option and selection of the student and shall not be a prerequisite of enrollment.

(f) Confer, on the recommendation of the faculty of any such institution, such degrees as usually are conferred by such institutions, or as they deem appropriate.

(g) Prescribe the qualifications for admission into such institutions.

(2) Subject to such delegation as the state board may decide to make to the institutions, divisions and departments under its control, the State Board of Higher Education, for each institution, division and department under its control, shall:

(a) Supervise the general course of instruction therein, and the research, extension, educational and other activities thereof.

(b) Adopt rules and bylaws for the government thereof, including the faculty, teachers, students and employees therein.

(c) Maintain cultural and physical development services and facilities therefor and, in connection therewith, may cooperate and enter into agreements with any person or governmental agency; and may provide student health services and contract therefor.

(d) Except as otherwise provided by law, prescribe and collect charges for services rendered to any person or entity.

(e) [*Pursuant to the procedures described in ORS 351.065,*] Adopt rules relating to the [*use of and access to*] **creation, use, custody and disclosure, including access, of** student **education** records of the institutions **that are consistent with the requirements of applicable state and federal law. Whenever a student has attained 18 years of age or is attending an institution of post-secondary education, the permission or consent required of and the rights accorded to a parent of the student regarding education records shall thereafter be required of and accorded to only the student.** [*including the opportunity to challenge inaccurate information placed in student records. However, except for directory information, records containing information kept by the institution, division or department concerning a student and furnished by the student or by the institution, division or department, including, but not limited to, information concerning discipline, counseling, membership activity, academic performance or other personal matters, shall not be available to public inspection or disclosure for any purpose except with the written consent of the student who is the subject of the record or upon order of a court of competent jurisdiction or, in an emergency, to appropriate persons if such information is necessary to protect the health or safety of the student or other persons. Nothing contained in this paragraph prohibits authorization of the inspection of such records by institution officials or employees who have a legitimate educational interest in inspecting student records, or by any representative of a state or federal governmental agency that is required by law to inspect student records. Rules may be adopted permitting release of personally identifiable information in connection with financial aid for which a student has applied or which a student has received. Directory information shall be defined by rules adopted by the State Board of Higher Education.*]

(3) For each institution under its jurisdiction, the State Board of Higher Education shall provide opportunities for part-time students to obtain complete undergraduate degrees at unconventional times, which include but are not limited to early morning and noon hours, evenings and weekends. In administering these degree programs, the institution may use any educational facility available for the use of the institution. The degree programs shall be self-supporting.

[(4) As used in subsection (2) of this section, "legitimate educational interest" means the demonstrated need to know by those officials of an institution who act in the student's educational interest, including faculty, administration, clerical and professional employees, and persons who manage student record information.]

SECTION 8. (1) Any person claiming to be aggrieved by the reckless disclosure of personally identifiable information from a student's education records as prohibited by rules of the State Board of Education or the State Board of Higher Education may file a civil action in circuit court for equitable relief or, subject to the terms and conditions of ORS 30.265 to 30.300, for damages, or both. The court may order such other relief as may be appropriate.

(2) The action authorized by this section shall be filed within two years of the alleged unlawful disclosure.

(3) In an action brought under this section, the court may allow the prevailing plaintiff costs, disbursements and reasonable attorney fees. If the defendant prevails, the court may award costs, disbursements and reasonable attorney fees if it finds the action to be frivolous.

SECTION 9. (1) A public school or school district shall disclose personally identifiable information from an education record of a student to law enforcement, child protective services and health care professionals in connection with a health or safety emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals.

(2) As used in this section, a "health or safety emergency" includes, but is not limited to, law enforcement efforts to locate a child who may be a victim of kidnap, abduction or custodial interference and law enforcement or child protective services efforts to respond to a report of child abuse or neglect pursuant to ORS 418.750 to 418.760.

Approved by the Governor September 10, 1993
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Section 2

Oregon Administrative Rules

STUDENT EDUCATION RECORDS INDEX

Amendment, request prior to transfer	OAR 581-21-250 (1)(m)
Annual Notification	OAR 581-21-260
Civil Action	OAR 581-21-420
Complaint, Federal	OAR 581-21-410
Conduct of Hearing	OAR 581-21-320
Definitions	OAR 581-21-220
Directory Information, Definition	OAR 581-21-220
Directory Information, Conditions for disclosure	OAR 581-21-390
Disclosure of Information	OAR 581-21-360
Distribution of Rules	OAR 581-21-430
District Policy Requirements	OAR 581-21-250
Education Agency	OAR 581-21-220
Education Records, Definitions	OAR 581-21-220
Exceptions	OAR 581-21-340
Federal or State Programs	OAR 581-21-370
Fees	OAR 581-21-280
Fire-safe Storage of Permanent Record	OAR 581-21-250(1)(k)
Health and Safety Emergencies	OAR 581-21-380
Inspection and Review	OAR 581-21-270
Limitation	OAR 581-21-290
Non-custodial Parents	OAR 581-21-230
Other Education Agencies	OAR 581-21-360
Parent, Definition	OAR 581-21-220
Parents' Right to Inspect	OAR 581-21-270
Permanent Record	OAR 581-21-250 (1)(i)
Personally Identifiable Information	OAR 581-21-220
Photos, Release of	OAR 581-21-250 (1)(h) and 220 (2)
Prior Consent to Disclose	OAR 581-21-330
Record of Disclosure and Requests for Access	OAR 581-21-400
Records and Reports	OAR 581-22-717
Redisclosure, Limitations	OAR 581-21-350
Request for Amendment	OAR 581-21-300
Retention	OAR 581-21-250 (1)(r)
Right to Hearing	OAR 581-21-310
Right to Inspect	OAR 581-21-270
Social Security Numbers	OAR 581-21-250 (1)(j)
Eligible Student Rights	OAR 581-21-240
Student Transcript Evaluation	OAR 581-21-210
Test Protocols	OAR 581-21-270 (4)
Timeline	OAR 581-21-270 (2)
Transfer of Records	OAR 581-21-250 (1)(l)(m)

OARs 581-21-210 through 581-21-440

SBE
OAR

581-21-210
Evaluating Student Transcripts

When evaluating student transcripts, the school district shall:

(1) Accept credits and attendance completed in standard Oregon schools as if they had been earned in the enrolling district;

(2) For out-of-state transfer students, accept credits and attendance completed in standard secondary schools as if the requirements had been completed in this state;

(3) For students from private, alternative, or nonstandard public secondary schools:
  (a) Determine the value of prior credits; and
  (b) Determine the number of years of school attendance or equivalent.

(4) Determine placement for students enrolled in grades K/1 through 8;

(5) Determine the value of credits obtained through correspondence courses in meeting the graduation requirements; and

(6) Determine the value of credits obtained in approved community college programs in meeting graduation requirements.

Statutory Authority: ORS 326.565

OAR 581-21-220
Definitions

As used in OARs 581-21-220 through 581-21-440, the following definitions apply:

(1) "Attendance" includes, but is not limited to:
  (a) Attendance in person or by correspondence; and
  (b) The period during which a person is working under a work-study program.

(2) "Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. Directory information includes, but is not limited to,

the student's name, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended. Directory information shall not include a student's address, telephone number, or photograph which may only be disclosed with prior consent under the conditions in OAR 581-21-330.

(3) "Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(4) "Educational agency or institution" means any public or private agency or institution providing educational services to students birth through age 21, and through grade 12, that receives federal or state funds either directly or by contract or subcontract with the Department under any program administered by the United States Secretary of Education or the Department. "Educational agency or institution" does not include those programs specifically excluded under 34 CFR § 99.1, Table 99-A.

(5) "Education records"

(a) The term means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution;

(b) The term does not include:

(A) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record,

(B) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are:

(i) Maintained separately from education records,

(ii) Maintained solely for law enforcement purposes, and

(iii) Disclosed only to law enforcement officials of the same jurisdiction,

(C) Records relating to an individual who is employed by an educational agency or institution, that are made and maintained in the normal course of business, that relate exclusively to the individual in that individual's capacity as an employee and that are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is

employed as a result of his or her status as a student are education records and not excepted under this subsection,

(D) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity,

(ii) Made, maintained, or used only in connection with treatment of the student, and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution,

(E) Records that only contain information relating to activities in which an individual engaged after he or she is no longer a student at that agency or institution,

(F) Medical or nursing records which are made or maintained separately and solely by a licensed health care professional who is not employed by the educational agency or institution, and which are not used for education purposes or planning.

(6) "Eligible student" means a student who has reached 18 years of age, or a student who is attending only an institution of postsecondary education and is not enrolled in a secondary school.

(7) "Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided.

(8) "Parent" means a parent of a student and includes a natural parent, a guardian, an individual authorized in writing to act as a parent in the absence of a parent or a guardian, or a surrogate parent appointed to represent a student with disabilities. The term does not include the state if the child is a ward of the state and the student is eligible for special education services or is suspected of being eligible for special education services under state and federal law.

(9) "Party" means an individual, agency, institution, or organization.

(10) "Personally identifiable information" includes, but is not limited to:

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) The telephone number of the student or the student's family;

(e) A photograph of the student;
(f) A personal identifier, such as the student's social security number or student number;
(g) A list of personal characteristics that would make the student's identity easily traceable; and
(h) Other information that would make the student's identity easily traceable.

(11) "Record" means any information recorded in any way including, but not limited to, handwriting, print, tape, film, microfilm and microfiche.

(12) "Student" means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

Statutory Authority: ORS 326.565 and 34 CFR § 99.3

OAR 581-21-230
The Rights of Parents

An educational agency or institution shall give full rights under OARs 581-21-220 through 581-21-420 to either parent, unless the agency or institution has been provided with evidence that there is a court order, state statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

Statutory Authority: ORS 326.565 and 34 CFR § 99.4

OAR 581-21-240
The Rights of Eligible Students

When a student becomes an eligible student, the rights accorded to, and consent required of, parents under OARs 581-21-220 through 581-21-420 transfer from the parents to the student. Nothing prevents educational agencies or institutions from giving students rights in addition to those given to parents.

Statutory Authority: ORS 326.565 and 34 CFR § 99.5

OAR 581-21-250
An Educational Agency or Institution's Policy

(1) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of OARs 581-21-220 through 581-21-430. The policy shall include:

(a) A description of how the agency or institution informs parents and students of their rights, in accordance with OAR 581-21-260;

(b) A description of how a parent or eligible student may inspect and review education records under OAR 581-21-270, including at least:

(A) The procedure the parent or eligible student must follow to inspect and review the records,

(B) A description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records, with an understanding that it may not deny access to education records

(C) A schedule of fees (if any) to be charged for copies, and

(D) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(c) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in OAR 581-21-340;

(d) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under OAR 581-21-340(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest. With respect to students with disabilities, each educational agency or institution shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information;

(e) A statement that a record of disclosures will be maintained as required by OAR 581-21-400, and that a parent or eligible student may inspect and review that record;

(f) Specification by the educational agency or institution of the types of personally identifiable information the agency or institution has designated as directory information under OAR 581-21-390;

(g) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under OAR 581-21-300, to obtain a hearing under OAR 581-21-310(1), and to add a statement to the record under OAR 581-21-310(3);

(h) A statement indicating whether the educational agency or institution has a policy of disclosing a student's address, telephone number, and photograph with prior consent of the parent or eligible student;

(i) A statement that the educational agency or institution maintains a permanent record on each student which includes the:
  (A) Name of the school,
  (B) Full name of the student,
  (C) Student's birth date and place of birth,
  (D) Name of parents/guardians,
  (E) Date of entry into the school,
  (F) Name of school previously attended,
  (G) Subjects taken,
  (H) Marks received,
  (I) Credits earned,
  (J) Attendance,
  (K) Date of withdrawal from school,
  (L) Social security number, subject to subsection (1)(j) of this rule, and
  (M) Such additional information as the educational agency or institution may prescribe;

(j) A statement that the educational agency or institution will request the social security number of a student and will include the social security number on the permanent student record only if the student or parent complies with the request. The request shall include notification to the parent that the provision of the social security number is voluntary and notification of the purposes for which the social security number will be used;

(k) A statement that the educational agency or institution provides for the retention of permanent records in a minimum one-hour fire-safe place in the educational agency or institution, or for keeping duplicate permanent records in a safe depository outside the building;

(l) A statement that within ten working days of a student seeking enrollment in a public or private school, or when a student is placed in a state institution (other than an institution of postsecondary education), a private agency or youth care center (hereinafter referred to as the new educational agency), the new educational agency shall notify the public or private school, institution, agency, or youth care center in which the student was formerly enrolled (hereinafter referred to as the former educational agency), and shall request the student's education records. The new educational agency shall inform the parent of the procedures outlined in subsection (1)(m) of this rule, shall secure release of the parent's address and telephone number in the new location and, if provided, shall forward said address and telephone number to the former educational agency along with the request for records;

(m) A statement that, subject to ORS 339.260, the former educational agency shall provide notice to the eligible student or student's parent by telephone or regular mail within three working days of receipt of the request for transfer from the new educational agency that meets the following requirements:

(A) That the student's education records have been requested by the new educational agency and the date the request was received by the former educational agency,

(B) That the parent has the right to review the education records that are subject to transfer and to request an amendment of specified contents of the education records pursuant to OAR 581-21-300 if the parent believes that the contents are inaccurate, misleading or in violation of the privacy or other rights of the student. The parent is entitled to a hearing under OAR 581-21-310 if the former educational agency refuses the request to amend specified contents in the student's education record. The hearing shall be conducted pursuant to OAR 581-21-320,

(C) That the parent's written request for review or amendment of the education records must be received by the former educational agency before the tenth working day after the former educational agency's receipt of the request for records. Nothing shall prevent the parent from reviewing education records or requesting an amendment of the education records pursuant to OAR 581-21-270 and OAR 581-21-300 at any time after the education records have been transferred to the new educational agency,

(D) That the former educational agency shall transfer the education records of the student to the new educational agency on the tenth working day after receipt of the request for transfer unless the former educational agency receives the parent's written request for review or amendment of specified contents of an education record before that date, and

(E) That, if a parent requests for review or amendment the specified contents of an education record, all education records, except those subject to review or amendment, shall be transferred to the new educational agency on the tenth working day after receipt of the request for transfer.

(n) A statement that the education records transferred to the new educational agency shall include any education records relating to the particular student retained by an education service district. The former education agency shall retain a copy of the education records that are to be transferred pursuant to subsection (1)(r) of this rule;

(o) A statement that the notice requirement and other applicable provisions described in subsection (1)(m) of this rule may be provided to the parent by the former educational agency at the time the parent formally withdraws the student from the former educational agency;

(p) A statement that the education records of a student may be transferred to the new educational agency at any time, including before the tenth working day after the receipt of the request for transfer, if notice to the parent has been given by the former educational agency pursuant to subsection (1)(m) of this rule and the parent expressly waives his or her

right to review and request an amendment of the student's education records;

(q) A statement that the educational agency or institution has a policy of disclosing personally identifiable information from an education record without the notice required in subsection (1)(m) of this rule, to an ESD, state regional program, or an educational agency other than those identified in subsection (1)(l) of this rule if a student seeks or intends to enroll in or is enrolled in or receives services from the educational agency. The term "receives services" includes but is not limited to an evaluation or re-evaluation for purposes of determining whether a student has a disability;

(r) Provision that copies of education records for students not found to be eligible for special education shall be retained for three years following the school year in which those records were created; copies of education records for students eligible for special education shall be retained for five years following the school year in which those records were created and copies of permanent records, as described in sub-section (1)(i) of this rule, shall be retained permanently for all students. and

(s) A statement that the provisions in subsections (1)(l) through (p) of this rule do not apply to the records of a student who is transferring to another elementary or secondary school within the same school district. These education records shall be transferred within ten working days of receipt of a request for transfer.

(2) For purposes of subsection (1)(l) of this rule:

(a) "Private agency" means an agency with which the Department of Education contracts under ORS 343.961; and

(b) "Youth care center" means a center as defined in ORS 420.855.

(3) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

Statutory Authority: ORS 326.565 and 34 CFR § 99.6

OAR 581-21-260
An Educational Agency or Institution's Annual Notification

(1) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under OARs 581-21-220 through 581-21-440. The notice must include a statement that the parent or eligible student has a right to:
  (a) Inspect and review the student's education records;
  (b) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;
  (c) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that these rules authorize disclosure without consent;
  (d) Pursuant to OAR 581-21-410, file with the United States Department of Education a complaint under 34 CFR § 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the Family Educational Rights and Privacy Act; and
  (e) Obtain a copy of the policy adopted under OAR 581-21-250.

(2) The notice provided under section (1) of this rule must also indicate the places where copies of the policy adopted under OAR 581-21-250 are located.

(3) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights.

(4) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

Statutory Authority: ORS 326.565 and 34 CFR § 99.7

OAR 581-21-270
Rights of Inspection and Review of Education Records

(1) Except as limited under OAR 581-21-290, each educational agency or institution shall permit a parent, an eligible student, or a representative of a parent if authorized in writing by the parent, to inspect and review the education records of the student.

(2) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

(3) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records.

(4) If a parent or an eligible student so requests, the educational agency or institution shall give the parent or eligible student a copy of the student's education records pursuant to ORS 192.440, except that no copy of test protocols, test questions and answers, and other documents described in ORS 192.501(4) shall be provided unless authorized by federal law.

(5) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this rule.

(6) While an education agency or institution is not required to give an eligible student access to treatment records under the definition of "education records" in OAR 581-21-220(5)(b)(D), the student may, at his or her expense, have those records reviewed by a physician or other appropriate professional of the student's choice.

Statutory Authority: ORS 326.565, 192.440, 192.501(4) and 34 CFR § 99.10

OAR 581-21-280
Fees for Copies of Education Records

(1) Student records are public records under ORS 192.410 through 192.505 but are exempt from disclosure except as authorized by OARs 581-21-220 through 581-21-440.

(2) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an educational record which is made for the parent or eligible student subject to section (3) of this rule.

(3) Notwithstanding ORS 192.440(3), an educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

Statutory Authority: ORS 326.565, 192.410 through 192.505 and 34 CFR § 99.11

OAR 581-21-290
Limitations on the Right to Inspect and Review Records

If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

Statutory Authority: ORS 326.565 and 34 CFR § 99.12

OAR 581-21-300
A Parent or Eligible Student's Request for Amendment of a Student's Education Records

(1) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(2) The education agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(3) If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under OAR 581-21-310.

Statutory Authority: ORS 326.565 and 34 CFR § 99.20

OAR 581-21-310
Right to a Hearing to Challenge Content

(1) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(2) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall:
(a) Amend the record accordingly; and
(b) Inform the parent or eligible student of the amendment in writing.

(3) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the educational agency or institution, or both.

(4) If an educational agency or institution places a statement in the education records of a student under section (3) of this rule, the agency or institution shall:

(a) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(b) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

Statutory Authority: ORS 326.565 and 34 CFR § 99.21

OAR 581-21-320
Minimum Requirements for the Conduct of a Hearing

The hearing required by OAR 581-21-310 must meet at a minimum the following requirements:

(1) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(2) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(3) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(4) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under OAR 581-21-310. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(5) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(6) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Statutory Authority: ORS 326.565 and 34 CFR § 99.22

OAR 581-21-330
Prior Consent to Disclose Information

(1) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in OAR 581-21-340.

(2) The written consent must:
  (a) Specify the records that may be disclosed;
  (b) State the purpose of the disclosure; and
  (c) Identify the party or class of parties to whom the disclosure may be made.

(3) When a disclosure is made under section (1) of this rule:
  (a) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and
  (b) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(4) The governing board of an educational agency or institution shall decide whether to allow the disclosure of student addresses, telephone numbers, and photographs. The disclosure of this personally identifiable information may only occur with prior consent of the parent or eligible student or under one of the exceptions to the consent requirement in OAR 581-21-340.

Statutory Authority: ORS 326.565 and 34 CFR § 99.30

OAR 581-21-340
Exceptions to Prior Consent

With the exception of sections (5) and (10) of this rule, an educational agency or institution shall disclose personally identifiable information from an education record of a student without the consent required by OAR 581-21-330 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to school board members during executive session pursuant to ORS 332.061, or to other school officials and teachers within the educational agency whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of OAR 581-21-250(1)(l) through (q) and OAR 581-21-360, to officials of another school, school system, institution of postsecondary education, education service district, state regional program, or other education agency where the student seeks or intends to enroll, or is enrolled in or receives services from the other agency or institution. The term "receives services" includes, but is not limited to, an evaluation or re-evaluation for purposes of determining whether a student has a disability.

(3) The disclosure is, subject to the requirements of OAR 581-21-370, to authorized representatives of:
(a) The Comptroller General of the United States;
(b) The Secretary of the United States Department of Education; or
(c) State and local educational authorities.

(4) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to:
(a) Determine eligibility for the aid;
(b) Determine the amount of the aid;
(c) Determine the conditions for the aid; or
(d) Enforce the terms and conditions of the aid.
As used in this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an education agency or institution.

(5) (a) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to:
(A) Develop, validate, or administer predictive tests,
(B) Administer student aid programs, or
(C) Improve instruction.
(b) The agency or institution may disclose information under this section only if:
(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization, and
(B) The information is destroyed when no longer needed for the purposes for which the study was conducted;
(c) For the purposes of this section, the term "organization" includes, but is not limited to, federal, state and local agencies, and independent organizations.

(6) The disclosure is to accrediting organizations to carry out their accrediting functions.

(7) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1986.

(8) The disclosure is to comply with a judicial order or lawfully issued subpoena. The educational agency or institution may disclose information under this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(9) The disclosure is in connection with a health or safety emergency, under the conditions described in OAR 581-21-380.

(10) The disclosure is information the educational agency or institution has designated as "directory information," under the conditions described in OAR 581-21-390.

(11) The disclosure is to the parent of a student who is not an eligible student or to an eligible student.

Statutory Authority: ORS 326.565 and 34 CFR § 99.31

OAR 51-21-350
Limitations on the Redisclosure of Information

(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student. The officers, employees, and agents of a party that receives information under this section may use the information, but only for the purposes for which the disclosure was made.

(2) Section (1) of this rule does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if:
(a) The disclosures meet the requirements of OAR 581-21-340; and
(b) The educational agency or institution has complied with the requirements in OAR 581-21-400(2).

(3) Section (1) of this rule does not apply to disclosures of directory information under OAR 581-21-340(10) or to disclosures to a parent or student under OAR 581-21-340(11).

(4) Except for disclosures under OAR 581-21-340(10) and (11), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this rule.

Statutory Authority: ORS 326.565 and 34 CFR § 99.33

OAR 581-21-360
Conditions for the Disclosure of Information to Other Educational Agencies or Institutions

(1) An educational agency or institution that discloses an education record under OAR 581-21-340(2) shall:
  (a) Comply with the written policy requirements in OAR 581-21-250(1)(l) through (r);
  (b) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and
  (c) Give the parent or eligible student, upon request, an opportunity for a hearing.

(2) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:
  (a) The student is enrolled in or receives services from the other agency or institution; and
  (b) The disclosure meets the requirements of section (1) of this rule.

Statutory Authority: ORS 326.565 and 34 CFR § 99.34

OAR 581-21-370
Conditions for the Disclosure of Information for Federal or State Program Purposes

(1) The officials listed in OAR 581-21-340(3) shall have access to education records in connection with an audit or evaluation of federal or state supported education programs, or for the enforcement of or compliance with federal or state legal requirements which relate to those programs.

(2) Information that is collected under section (1) of this rule must:
  (a) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in section (1) of this rule; and

(b) Be destroyed when no longer needed for the purposes listed in Section (1) of this rule.

(3) Section (2) of this rule does not apply if:
(a) The parent or eligible student has given written consent for the disclosure under OAR 581-21-330; or
(b) The collection of personally identifiable information is specifically authorized by state or federal law.

Statutory Authority: ORS 326.565 and 34 CFR § 99.35

OAR 581-21-380
Conditions for the Disclosure of Information in Health and Safety Emergencies

(1) An educational agency or institution shall disclose personally identifiable information from an education record to law enforcement, child protective services, and health care professionals, and other appropriate parties in connection with a health and safety emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals.

(2) As used in this rule, a "health or safety emergency" includes, but is not limited to, law enforcement efforts to locate a child who may be a victim of kidnap, abduction, or custodial interference and law enforcement or child protective services efforts to respond to a report of child abuse or neglect pursuant to ORS 419B.005 to 419B.045.

(3) Sections (1) and (2) of this rule shall be strictly construed.

Statutory Authority: ORS 326.565, 336.187 and 34 CFR § 99.36

OAR 581-21-390
Conditions for the Disclosure of Directory Information

(1) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the educational agency or institution of:
(a) The types of personally identifiable information that the educational agency or institution has designated as directory information;
(b) A parent or eligible student's right to refuse to let the educational agency or institution designate any or all of those types of information about the student as directory information; and

(c) The period of time within which a parent or eligible student has to notify the educational agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(2) An educational agency or institution may disclose directory information about former students without meeting the conditions in section (1) of this rule.

Statutory Authority: ORS 326.565 and 34 CFR § 99.37

OAR 581-21-400
Recordkeeping Requirements

(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.
  (a) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained;
  (b) For each request or disclosure the record must include:
    (A) The parties who have requested or received personally identifiable information from the education records,
    (B) The date access was given, and
    (C) The legitimate interests the parties had in requesting or obtaining the information.

(2) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under OAR 581-21-350(2), the record of disclosure required under this section must include:
  (a) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and
  (b) The legitimate interests under OAR 581-21-340 which each of the additional parties has in requesting or obtaining the information.

(3) The following parties may inspect the record relating to each student:
  (a) The parent or eligible student;
  (b) The school official or his or her assistants who are responsible for the custody of the records;

(c) Those parties authorized in OAR 581-21-340(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(4) Section (1) of this rule does not apply if the request was from or the disclosure was to:
(a) The parent or eligible student;
(b) A school official under OAR 581-21-340(1);
(c) A party with written consent from the parent or eligible student; or
(d) A party seeking directory information.

Statutory Authority: ORS 326.565 and 34 CFR § 99.32

OAR 581-21-410
Filing a Federal Complaint

(1) A person may file a written complaint with the Family Policy Compliance Office, United States Department of Education, regarding an alleged violation under the Family Educational Rights and Privacy Act. The Office's address is: Family Policy Compliance Office, U.S. Department of Education, Washington, DC 20202.

(2) A timely complaint under section (1) of this rule is defined as an allegation of a violation of the Family Educational Rights and Privacy Act that is submitted to the Family Policy Compliance Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(3) The Family Policy Compliance Office extends the time limit in section (2) of this rule if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Family Policy Compliance Office.

Statutory Authority: ORS 326.565, 34 CFR § 99.63 and 99.64

OAR 581-21-420
Civil Action

Any person claiming to be aggrieved by the reckless disclosure of personally identifiable information from a student's education records, as prohibited by OARs 581-21-220 through 581-21-440, may file a civil action in circuit court pursuant to ORS 30.864.

Statutory Authority: ORS 326.565 and 30.864

OAR 581-21-430
The Distribution of Rules Relating to Student Records

(1) The State Board of Education shall distribute the administrative rules regarding student education records to all school districts.

(2) School districts shall make those rules available to the public schools in the district and to the public.

Statutory Authority: ORS 326.565

OAR 581-21-440
Effective Date of Student Education Records Rules

OAR 581-22-717 as amended and OARs 581-21-210 through 581-21-440 shall go into effect May 4, 1994.

Statutory Authority: ORS 326

dc oar 22-210
8/2/94

Section 3

Sample Board Policies

(Scheduled for distribution in November, 1994.)

Section 4

Sample Procedures and Forms

(Scheduled for distribution in November, 1994.)

Section 5

Questions and Answers

(Scheduled for distribution in January, 1995.)